IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 151 OF 2005

Mr. Mahadev Murlidhar Degonakar & ors. ... Appellants

V/s

Mr. Govind Murlidhar Degaonkar ... Respondent

Mr. S.N. Chandrachud for the appellants.

Mr. D.W. Bhosale for the respondent.

CORAM: P.V. KAKADE, J.
DATED: 13TH JUNE, 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. District Judge, Pandharpur dated 21.10.2004 allowing the appeal and decreeing the suit for partition and separate possession of the suit property amongst the sharers and setting aside the judgment and order passed by the Civil Judge, Jr.Divn., Pandharpur, dated 31.8.1998 dismissing the suit and imposing compensatory cost on the plaintiff.

2. The plaintiff filed the suit for partition and separate possession of the property on the ground that the property was ancestral property owned by the joint

family of plaintiff and defendants and plaintiff had 1/2 share in the suit property. The defendants challenged the suit on the ground that the defendant No.1's father Murlidhar had become exclusive owner of 1/2 share of the said property which belongs to his father Baburao alias Narayan on the basis of gift deed. It was further contended that there was partition of the suit property amongst plaintiff, defendant No.1 and their father in the year 1970 and, therefore, there was no question of availability of the property for the partition. On such and other grounds the suit came to be filed.

The learned Trial Judge, after hearing both sides came to the conclusion that the plaintiff had failed to prove that the property was ancestral property and belongs to the joint family. He also came to the conclusion that there was oral partition amongst the parties in the year 1970 by which virtue the defendant No.1 had become exclusive owner thereof and hence the suit came to be dismissed.

The appeal was carried to the Court of Addl. District Judge, Pandharpur. The learned Addl. District Judge, after hearing both sides came to the conclusion that the decree passed by the lower Court was required to be set

aside as the plaintiff had succeeded in establishing the fact that the property was ancestral property of himself and defendants. It was also held that the defendants did not get any right, title or interest to the 1/2 share in the suit property by virtue of un-registered gift deed dated 28.6.1961 executed by his brother Baburao alias Narayan. It was held that the oral partition theory of 1970 was not established and, as such, the suit property was available for partition and accordingly the decree for partition came to be effected. Hence the present appeal.

3. At the outset, it may be noted that the entire evidence on record, as appreciated by the lower appellate Court, appears to be conspicuously silent regarding cogent and conclusive evidence of so-called partition of 1970. It was submitted on behalf of the appellants that the suit came to be filed in the year 1986 and, therefore, it was not possible for the defendant No.1 to establish the factum of partition of immovable as well as movable properties in the year 1970. The learned lower appellate Court has discarded this theory and has held that theory of oral partition has to be discarded for want of evidence on record. I, after due consideration, agree with the learned lower

appellate Court Judge and hold that the inference drawn by the lower appellate Court is found to be just, legal and proper for want of proper evidence on record.

Similarly, it was argued on behalf of the defendants in the lower Court that there was no joint family at all between plaintiff and defendant No.1 and Murlidhar. However, it is seen from the record that the suit property is the property of grandfather of plaintiff and defendant No.1 and, therefore, mere separate mess or residence will not disrupt the nature of joint family property so as to distinguish the right of plaintiff of partition in that suit property.

4. The learned counsel for the appellants sought to raise certain issues submitting that those were substantial questions of law. The first issue which was sought to be raised was to the effect that there was presumption of existence of H.U.F. of every Hindu family but there was no such presumption available regarding H.U.F. property. However, in my view, this issue is properly answered by the lower appellate Court Judge on the basis of evidence when he has observed that mere separate mess or residence will disrupt the nature of joint family property and the property was evidently

belonging to the grandfather of the parties. Similarly, both the Courts below have discarded the evidence of unregistered gift deed holding that it does not give any right to the defendant No.1 regarding 1/2 share in the property. Since, the concurrent finding is recorded by both the Courts below, I need not deal with this aspect for the fact that unregistered gift deed cannot be the basis for claiming of the immovable property. The remaining questions sought to be raised are found to be the questions of fact and do not raise any substantial question of law and, therefore, in my view, that does not have any merits and findings recorded and order passed by the lower appellate Court Judge is seen to be just, legal and proper.

5. Time and again, the Apex Court has held that, it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact, being the first appellate Court. In the present case before us, the lower appellate Court is seen to have appreciated the entire evidence on legal as well as factual aspects properly and correctly and, therefore, it would brook no interference by this Court.

6. In the result, the appeal stands dismissed with no

order as to costs. The Civil Application No. 332 of 2005 also stands dismissed with no order as to costs.

7. At this stage, the learned counsel for the appellants sought for stay of the order. In view of the facts and circumstances, this order shall stand stayed for six weeks.

(P.V. Kakade, J.)